Md Nahar bin Noordin v Pentadbir Tanah Daerah Hulu Langat

HIGH COURT (SHAH ALAM) — LAND REFERENCE NO 15–94–06 OF 2016
MOHD YAZID J
9 OCTOBER 2017

Land Law — Acquisition of land — Land reference — Applicant's land acquired under Land Acquisition Act 1960 — Respondent delivered award — Applicant filed objection — Respondent referred objection to High Court — Applicant served notice to direct respondent's appearance in court and to cross-examine respondent — Whether respondent as district land administrator could be compelled to appear and be cross-examined in land reference hearing — Land Acquisition Act 1960 s 43

The applicant's land was acquired under the Land Acquisition Act 1960 ('the Act') and the respondent had delivered his award in Form H. Dissatisfied with the award, the applicant filed an objection and the respondent subsequently, referred the objection to the High Court pursuant to s 38(5) of the Act. The land reference under s 45 of the Act was fixed for hearing on 17 July 2017. The applicant had subsequently served a notice to direct the respondent's appearance in the court and to cross-examine the respondent based on the amount of the respondent's award in Form H. The respondent raised an objection that the respondent could not be compelled to appear in court nor to be cross-examined. The issue for determination was whether the respondent as the district land administrator ('the PTD') could be compelled to appear and be cross-examined in a land reference hearing.

Held:

(1) Section 43(d) of the Act compelled and made it mandatory for the PTD to be required to attend a land reference hearing whenever the PTD's award was being challenged. The express provision of s 43 the Act required the PTD to appear in person at the land reference hearing to give evidence to defend the award that he had made in respect of the area of land or, in the present case, the amount of compensation. This was in consistent with the principle of audi alteram partem. The manner in which the respondent defended his position was by the process of examination and cross-examination. The express provision of the statute was not devoid of meaning. It ought to be given its full and plain effect (see paras 13–15, 17 & 21).

[Bahasa Malaysia summary

Tanah pemohon telah diperolehi di bawah Akta Pengambilan Tanah 1960 ('Akta tersebut') dan responden telah memberikan awardnya dalam Borang H. Berasa tidak puas hati dengan award itu, pemohon telah memfailkan bantahan dan responden kemudian, telah merujuk bantahan itu kepada Mahkamah Tinggi menurut s 38(5) Akta tersebut. Rujukan tanah di bawah s 45 Akta tersebut telah ditetapkan untuk perbicaraan pada 17 Julai 2017. Pemohon berikutan itu telah menyampaikan notis untuk mengarahkan kehadiran responden di mahkamah dan untuk memeriksa balas responden berdasarkan jumlah award responden dalam Borang H. Responden telah menimbulkan bantahan bahawa responden tidak boleh dipaksa untuk hadir di mahkamah mahu pun diperiksa balas. Isu untuk ditentukan adalah sama ada responden sebagai pentadbir tanah daerah ('PTD') boleh dipaksa untuk hadir dan diperiksa balas dalam perbicaraan rujukan tanah.

Diputuskan:

(1) Seksyen 43(d) Akta tersebut memaksa dan menjadikan ia mandatori untuk PTD dikehendaki menghadiri perbicaraan rujukan tanah setiap kali award PTD dicabar. Peruntukan nyata s 43 Akta tersebut menghendaki PTD menghadiri dengan sendiri di perbicaraan rujukan tanah itu untuk memberikan keterangan bagi membela award yang dibuatnya berkaitan kawasan tanah tersebut atau, dalam kes ini, jumlah pampasan. Ini adalah konsisten dengan prinsip audi alteram partem. Cara responden membela kedudukannya adalah melalui proses pemeriksaan dan pemeriksaan balas. Peruntukan nyata statut tidak mempunyai maksud. Ia patut diberikan kesan yang sepenuhya dan jelas (lihat perenggan 13–15, 17 & 21).]

Notes

For a case on land reference, see 8(2) *Mallal's Digest* (5th Ed, 2017 Reissue) para 2450.

Cases referred to

Azman bin Jufri v Medtronic Australasia Pty Ltd [2015] 6 MLJ 841, CA (refd)
B Surinder Singh Kanda v The Government of the Federation of Malaya [1962] 1 MLJ 169; [1962] 1 LNS 9, PC (refd)
Bishnu Prosad Chunder v Binoy Krishna Rahatgi And Anr AIR 1945 Cal 142, HC (refd)
Coutts v Commonwealth (1985) 59 ALR 699, HC (refd)
Dato' Seri Anwar bin Ibrahim v PP [2010] 2 MLJ 312, FC (refd)
Ee Chong Pang & Ors v The Land Administrator of the District of Alor Gajah & Anor [2013] 2 MLJ 16; [2013] 3 CLJ 649, CA (refd)
Hari Bhadur Ghale v PP [2012] 6 MLJ 597; [2012] 7 CLJ 789, FC (refd)

Kijal Resort Sdn Bhd v Pentadbir Tanah Kemaman & Anor [2016] 1 MLJ 544, FC (refd)
Mohd Saperi Mohd Nasir lwn Pentadbir Tanah Daerah Alor Gajah [1997] 5 MLJ 800; [1998] 1 CLJ Supp 287, HC (refd)
Navaradnam v Suppiah Chettiar [1973] 1 MLJ 173, FC (refd)
Ng Kim Moi (P) & Ors v Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus (Negeri Sembilan Township Sdn Bhd & Anor, proposed intervenors) [2004] 3 MLJ 301; [2004] 3 CLJ 131, CA (refd)
Oliver Young v Collector Of Land Revenue, Batu Pahat [1972] 2 MLJ 208 (refd)
Ramasamy a/l Amaippan v Kwan Lee Pin (Majlis Peguam Malaysia, intervener) [2017] MLJU 783; [2017] 1 LNS 718, CA (refd)
Setia Usaha Tetap Kementerian Pelajaran v Collector of Land Revenue, Butterworth [1972] 2 MLJ 155 (refd)
Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor [2011] 4 MLJ 403; [2011] 1 CLJ 95, CA (refd)
Tong Tiong Lim v Pentadbir Tanah Daerah, Johor Bahru & Anor [1994] 3 MLJ 674; [1994] 4 CLJ 916, HC (refd)

Legislation referred to

Federal Constitution art 13
Industrial Relations Act 1967 s 24(2)
Land Acquisition Act 1960 ss 12, 38(5), 40A, 43, 43(d), 45, 47, Forms D, H, N
Land Acquisition Act of 1894 [IND] s 20(c)

Rosli Dahlan (Ho Ai Ting with him) (Lee Hishammuddin Allen & Gledhill) for the appellant.
Mohd Abd Hakim (State Legal Officer) for the respondent.

Mohd Yazid J:

THE FACTS

[1] The applicant's land was acquired under the Land Acquisition Act 1960. The declaration to acquire the applicant's land was made in Form D dated 7 November 2013. The enquiry only commenced some two years later on 23 April 2015. The respondent delivered his award in Form H dated 9 June 2015 but only served it on the applicant on 23 July 2015.

[2] The applicant was dissatisfied with the respondent's award and filed his objection in Form N on 3 September 2015. The respondent referred the objection to the High Court pursuant to s 38(5) of the Land Acquisition Act 1960. The respondent filed the reference bundle under *Ikatan Borang* O dated 13 June 2016 but did not serve it on the applicant.

[3] The hearing of the land reference under s 45 of the Land Acquisition Act 1960 was fixed on 17 July 2017. The applicant had filed his private valuer's valuation report and the rebuttal report. The applicant also served a notice to direct the respondent's appearance in court and to cross-examine the respondent on the basis and amount of the respondent's award in Form H.

[4] The notice issued by the Applicant to the Respondent fulfilled all the requirements of s 43 of the Land Acquisition Act 1960 in that it gave sufficient notice to the respondent — date on which the court will proceed to hear and determine the objection; the details of the land and the direction to appear before the court at such hearing. For all purposes and intent, the objective of the mandatory requirement of s 43 of the Land Acquisition Act 1960 has been fulfilled by the applicant's notice.

[5] On the hearing date, the respondent was present. In the presence of the two assessors, the government assessor Mohd Rofi bin Yusof and the private assessor Mohd Azuan bin Abu Mansol as the private assessor, the state legal officer/federal counsel Mohd Abdul Hakim bin Mohd Ali, raised an objection that the respondent cannot be compelled to appear in court nor to be cross-examined. Due to this objection, I adjourned the land reference and directed both sides to address me on whether a PTD can be compelled to appear and be cross-examined in a land reference hearing.

[6] Both sides filed their written submissions on the aforesaid issues. I heard counsel from both sides on 12 September 2017 and fixed this matter for decision on 26 September 2017. I thank the applicant's counsel, Mr Rosli Dahlan and Ms Ho Ai Ting for a very detailed submission that has assisted me in coming to the ruling that I am making herein. These are the grounds of my decision.

APPEARANCE AND CROSS-EXAMINATION OF THE PTD

[7] The parties to a land reference are principally the land owner as applicant and the *pentadbir tanah daerah* ('the PTD') as the respondent.

[8] In my two years of conducting land reference cases in Shah Alam, I have observed that the PTD has never been cross-examined on his award. This has resulted in an impression that the PTD cannot be cross-examined, and hence the objection by the federal counsel when faced with this request by the applicant's counsel.

[9] It is often forgotten that there is an express statutory provision on the requirement for the PTD to attend court at the land reference hearing. This is specifically set out in s 43 of the Land Acquisition Act 1960 which states:

> On receiving a reference from the Land Administrator pursuant to section 38(5), the *Court shall cause a notice* in Form P, specifying the day on which the Court will proceed to hear and determine the objection contained in such reference, *to be served on the following persons*, and *directing their appearance before the Court at that hearing* —
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> (a) the applicant;
>
> (b) the person or corporation, if any, on whose behalf the proceedings were instituted pursuant to section 3;
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> (c) all persons interested in the objection, except such, if any, as have consented without protest to receive payment of the compensation awarded; and
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> (d) *if the objection is in regard* to the area of the land or *to the amount of the compensation, the Land Administrator*. (Emphasis added.)

[10] The word 'shall' in s 43 of the Land Acquisition Act 1960 connotes a mandatory requirement for the PTD to be served with a notice to appear before the court at the land reference hearing whenever his award is challenged in regard to the area of the land or to the amount of compensation (see *Coutts v Commonwealth* (1985) 59 ALR 699 at p 713; *Azman bin Jufri v Medtronic Australasia Pty Ltd* [2015] 6 MLJ 841 at p 855; *Kijal Resort Sdn Bhd v Pentadbir Tanah Kemaman & Anor* [2016] 1 MLJ 544 at pp 579–580) which established the principle that the word 'shall' or 'must' is prima facie a mandatory provision which must be complied with without exception.

[11] It is to be noted that s 43(d) of the Land Acquisition Act 1960 is in pari materia with s 20(c) of the Indian Land Acquisition Act of 1894 which states:

> The *Court shall* thereupon *cause a notice* specifying the day on which the Court will proceed to determine the objection, and *directing their appearance before the Court on that day*, to be served on the following persons, namely:
>
> (c) *if the objection is in regard* to the area of the land or *to the amount of the compensation, the Collector*.

[12] As the Malaysian Land Acquisition Act 1960 is based on the then Indian Land Acquisition Act of 1894, assistance can also be found in the Indian cases. In *Bishnu Prosad Chunder v Binoy Krishna Rahatgi And Anr* AIR 1945 Cal 142, the High Court of Calcutta at p 143 held:

> The proceeding in Court below was misconceived and defective from the beginning. The Collector ought to have been given notice under s 20 of the Act and the case should have been tried as a valuation case.

[13] Prima facie, s 43(d) of the Land Acquisition Act 1960 makes it mandatory for the PTD to be required to attend a land reference hearing

whenever the PTD's award is being challenged. There is good reason for that statutory provision.

[14] The subject matter of the land reference hearing is a challenge against the amount of the respondent's award. Therefore, the respondent must be heard at the hearing to defend his award consistent with the principle of audi alteram patem. In the Privy Council case of *B Surinder Singh Kanda v The Government of the Federation of Malaya* [1962] 1 MLJ 169; [1962] 1 LNS 9, Lord Denning at p 172–173 (MLJ); p 4 (LNS) succinctly described that natural justice entails:

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. *He must know what evidence has been given and what statements have been made affecting him; and* then *he must be given a fair opportunity to correct or contradict them*.

[15] The manner in which the respondent defends his position is by the process of examination and cross-examination. This fundamental principle has time and again been reaffirmed including recently by the Court of Appeal in *Ramasamy a/l Amaippan v Kwan Lee Pin (Majlis Peguam Malaysia, intervener)* [2017] MLJU 783; [2017] 1 LNS 718 at pp 6–7:

> [12] No one could have described it any better. *A denial of cross examination is a material non-compliance amounting to a breach of natural justice*. In the celebrated case of *Council of Civil Service Unions v Minister for the Civil Service* [1983] UKHL 6 ('the *CCSU* case') a non-compliance of natural justice qualifies as a ground to quash the impugned decision on the ground of procedural impropriety, which Lord Diplock had explained as a decision that was made in defiance of set procedures prescribed by a statute or where the 'rules of natural justice' have not been adhered to by the decision-maker. *The twin pillars upon which the rules of natural justice are hoisted consist of* the rule against bias or Nemo judex in causa sua, which basically means that a man ought not to be a judge in his own cause, and secondly, *the audi alteram patem rule, which encapsulates the right of the other side to be heard*. In an article entitled 'The Rule against Bias' by Mathew Groves (2009) UMonashLRS 10 it was observed that while the hearing rule, being the right to be heard, governs the procedural features of decision making, the bias rule governs the attitude or the state of mind of the decision maker. We found that observation to be an apt one. *It captures in gist, what the rules of natural justice entail in practical terms, in the context of judicial and quasi-judicial proceedings. An astute adherence to this important concept will invariably result in impartiality, a much sought-after commodity in all forms of tribunals which decide on the rights and liabilities of litigating parties*.

[16] Once s 43 of the Land Acquisition Act 1960 makes it mandatory for the PTD to appear at the land reference hearing, then it must be for a purpose. It cannot be that the PTD is required to appear only to watch the proceedings from the public gallery. *Sanjiva Row's Law of Land Acquisition and Compensation* (8th Ed) by Justice K Shanmukham at pp 544–545 explains that

the word 'appearance' in s 20(c) of the Indian Land Acquisition Act of 1894 means as follows:

> Section 20(c) requires a notice to be served on the Collector when the dispute relates to the area of the land acquired or to the amount of compensation ...
>
> The section is silent as to what a notice under cll (b) and (c) of the section would contain. Presumably, *the notice* contemplated *is a substitute for a summons on a defendant* under the Civil Procedure Code *'to appear and answer the claim' made by the applicant*. Consequently, *the High Court of Calcutta has held* that on receipt of notice under cl (c), *the Collector must enter appearances and should defend the case exactly as he would defend a government suit. It is the duty of the Collector to see that evidence is forthcoming to show the fairness of the amount which he has given as compensation. The Collector must remember that the court will decide on the evidence before it about the amount of compensation that should be given, and he must, therefore, be prepared with reliable evidence at the trial.* In a proceeding for ascertainment of compensation, on a reference under s 18, *the claimant is to be regarded as the plaintiff and the government as the defendant*. No proceeding can properly go on in the absence of the representative of the government.
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> In valuation references under cl (c), the answer on the part of the Collector is already contained in his reference to the court and all that is left for the government is to appear and defend the award ...
>
> Since, as has been already stated, a notice under this section is a substitute for summons under the Code of Civil Procedure, it follows *that if a person interested fails to appear* on being served with notice under this section, *the consequences following upon such failure to appear will be the same as those for non-appearance of a plaintiff or of a defendant on service of summons* under the provisions of the Code of Civil Procedure.
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> (See also *Commentary on The Land Acquisition Act* by Om Prakash Aggarwala and VG Ramachandran's *The Law of Land Acquisition and Compensation* (8th Ed) by Justice GC Mathur.)

[17] Therefore, I am of the view that the express provision of s 43 of the Land Acquisition Act 1960 requires the PTD to appear in person at the land reference hearing to give evidence to defend the award that he had made in respect of the area of land or, in this case the amount of compensation. The express provision of the statute is not devoid of meaning. It must be given its full and plain effect (*Navaradnam v Suppiah Chettiar* [1973] 1 MLJ 173 at p 176 (FC); *Dato' Seri Anwar bin Ibrahim v Public Prosecutor* [2010] 2 MLJ 312 at pp 325–326 (FC); *Hari Bhadur Ghale v Public Prosecutor* [2012] 6 MLJ 597; [2012] 7 CLJ 789 at p 795 (FC)).

[18] I should also address the concern that the PTD cannot be compelled to appear and be cross-examined because in conducting the land enquiry and making his award, the PTD was carrying out a quasi-judicial role.

[19] In my view and for reasons that I will explain, that contention is misconceived. There are numerous instances where the PTD has been called to be cross-examined in land matters in their exercise of quasi-judicial functions (see *Tong Tiong Lim v Pentadbir Tanah Daerah, Johor Bahru & Anor* [1994] 3 MLJ 674 at pp 677–678; [1994] 4 CLJ 916 at pp 918–919; *Oliver Young v Collector Of Land Revenue, Batu Pahat* [1972] 2 MLJ 208 at p 209).

[20] It is also misconceived to liken the role of a PTD under the Land Acquisition Act 1960 to that of the President of an Industrial Court because of the express wording of s 24(2) of the Industrial Relations Act 1967 which specifically prohibits the President from being made a witness or a party, as submitted by the federal counsel, as follows:

> (2) Notwithstanding anything to the contrary in any written law, *no member of the Court shall be compelled by any court to appear as a witness or party in any proceedings before that Court in relation to any act, matter or thing performed by him as a member of the Court under this Act*.

[21] There is no such similar express provision under the Land Acquisition Act 1960. On the contrary, the whole scheme of the Land Acquisition Act 1960 necessarily requires the PTD to be a party on behalf of the State Authority who acquires the private land. This is clearly borne out by s 43(d) of the Land Acquisition Act 1960 which compels and makes the appearance of the PTD a mandatory requirement at the land reference hearing.

[22] It has often been said that the Land Acquisition Act 1960 is a draconian legislation with specific safeguards built in to it where the special provisions of the Land Acquisition Act 1960 must be strictly adhered to by the relevant public authorities and made applicable to all relevant parties. Strict compliance with the prescribed procedures under the Land Acquisition Act 1960 is mandatory and cannot be dispensed with willy-nilly (see *Ee Chong Pang & Ors v The Land Administrator of the District of Alor Gajah & Anor* [2013] 2 MLJ 16 at pp 22–23; [2013] 3 CLJ 649 at pp 656–657 (CA); *Ng Kim Moi (P) & Ors v Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus (Negeri Sembilan Township Sdn Bhd & Anor, proposed intervenors)* [2004] 3 MLJ 301 at p 315; [2004] 3 CLJ 131 at p 144 (CA); *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v Inch Kenneth Kajang Rubber Ltd & Anor* [2011] 4 MLJ 403 at p 406; [2011] 1 CLJ 95 at p 100 (CA)).

[23] I have considered the two cases cited by the Federal Counsel (*Setia Usaha Tetap Kementerian Pelajaran v Collector of Land Revenue, Butterworth* [1972] 2 MLJ 155 and *Mohd Saperi Mohd Nasir lwn Pentadbir Tanah Daerah Alor Gajah* [1997] 5 MLJ 800; [1998] 1 CLJ Supp 287) and I am of the view that they do not apply to the present case.

[24] The scheme of the Land Acquisition Act 1960 requiring the PTD to be cross-examined is to enable the peculiar facts and circumstances of this case, the credibility or otherwise of the JPPH's report, the appropriateness of the PTD's Award and what is a fair, reasonable and adequate compensation to be paid to the Applicant to be ascertained by this court assisted by the learned assessors as prescribed by ss 12, 40A and 47 of the Land Acquisition Act 1960 consistent with the intent and spirit of art 13 of the Federal Constitution.

[25] Therefore, I hold as follows:

(a) s 43 of the Land Acquisition Act 1960 mandatorily requires the PTD to appear in person at a land reference hearing;

(b) the PTD's appearance is to defend the case exactly as he would defend a government suit as he is a party to the suit;

(c) in making his appearance, it is the duty of the PTD to see that evidence is forthcoming to show the fairness of the amount which he has given as compensation; and

(d) therefore, it is mandatory for the PTD to appear and be prepared with reliable evidence at the land reference hearing to answer the claim made by the land owner/applicant by way of cross-examination.

Order accordingly.

Reported by Dzulqarnain Ab Fatar